



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

September 1, 2023

BY ECF

The Honorable J. Paul Oetken
United States District Court Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. John Costanzo Jr. and Manuel Recio, 22 Cr. 281 (JPO)*

Dear Judge Oetken:

The Government respectfully submits this letter on behalf of the parties to inform the Court that, in light of the filing deadlines the Court has scheduled in advance of the October 23, 2023 trial date, the parties have jointly agreed to the following pretrial disclosure deadlines, which they request that the Court adopt:

September 11, 2023: The Government provides notice to the defendants of evidence it reasonably seeks to offer pursuant to Federal Rule of Evidence 404(b). This notice will be subject to good-faith revision as the Government continues to prepare its case for trial.

The Government provides notice to the defendants of evidence it reasonably seeks to offer pursuant to Federal Rule of Evidence 801(d)(2)(E). This notice will be subject to good faith revision as the Government continues to prepare its case for trial.

September 15, 2023: The parties provide notice to each other, consistent with the requirements of Federal Rule of Criminal Procedure 16, of experts potentially to be called during the Government's case-in-chief and the defendants' cases, if any.

The Government provides the defendants a list of witnesses whom the Government reasonably expects to call in its case-in-chief.

The Government provides to the defendants material covered by 18 U.S.C. § 3500 and *Giglio v. United States*, 405 U.S. 150 (1972), to the extent it was not previously produced to the defendants.

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The defendants provide to the Government a list of witnesses whom the defendants reasonably expect to call in their cases.

The defendants provide to the Government material covered by Federal Rule of Criminal Procedure 26.2.

September 27, 2023: The parties file motions *in limine* (Dkt. No. 50).

The Government provides the defendants a list of exhibits the Government reasonably expects to seek to introduce during its case-in-chief. This exhibit list will be subject to good-faith revision as the Government continues to prepare its case for trial, including in response to the defendants' lists of proposed exhibits that it anticipates seeking to introduce into evidence during the Government's case-in-chief.

The defendants provide the Government lists of exhibits that the defendants reasonably expect to seek to introduce during the Government's case-in-chief and their cases. These exhibit lists will be subject to good-faith revision as the defendants continue to prepare for their cases.

September 29, 2023: The parties provide notice to each other, consistent with the requirements of Rule 16, of rebuttal experts, if any.

October 4, 2023: The parties file responses to motions *in limine*, proposed *voir dire*, proposed jury charges, and a joint description of the case. (Dkt. No. 50).

The parties recognize that 3500 and Rule 26.2 obligations are continuing, so when new material is generated after the pertinent deadline described above, such material will be timely provided, *i.e.*, generally less than 48 hours after it is generated, and at least 12 hours prior to the witness to whom it applies next taking the stand.¹ The parties have also agreed that, consistent with Rule 26.2(c), if the parties intend to withhold any such material on the ground of privilege or work-product, it will provide that material to the Court for timely review.

In addition to the schedule above, the parties have also conferred and reached agreement regarding the following issues, which are designed to narrow or moot disputes, specifically: (1) attempting in good faith to share any proposed summary chart at least one week before it will be sought to be introduced, notwithstanding the foregoing, to permit the opposing party to review the accuracy of the chart; (2) sharing any visuals or slides to be used in opening statements, at least

¹ The parties agree that if the § 3500 or Rule 26.2 material is generated less than 12 hours before the witness next takes the stand, it shall be produced as soon as is practicable after its generation.

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one business day before such statements; and (3) alerting the opposing party to the next two days' witnesses, in anticipated order.

Furthermore, both the Government and the defendants anticipate timely agreeing to stipulations to avoid the need to call custodians of records or otherwise to authenticate evidence or the accuracy of transcripts, and the parties agree that the dates set forth herein do not alter the parties' reciprocal discovery obligations or the obligation to produce materials obtained pursuant to Federal Rule of Criminal Procedure 17(c), absent an order to the contrary.

Respectfully submitted,

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cc: All counsel (by ECF)